

BANKIM P. DALAL & ANR. ..PETITIONERS

V/S

STATE OF MAHARASHTRA ..RESPONDENT

**DATE : 22ND OCTOBER, 2007.**

P.C.

1. Heard learned counsel for the Petitioners and Respondent. This Writ Petition is filed by the Petitioners for quashing of the complaint filed against them under the provisions of section 406 and 420 of the Indian Penal Code. It is alleged that the accused accepted Rs. 30 lakhs from the complainant and they had assured them that they would be allotted flats in the newly constructed building at Plot No. 7, Khetwadi, 9th Lane, Mumbai 400 004. However inspite of the completion of the said building the flats were not given to them. Therefore a complaint came to be filed before the police against the Petitioners/Accused. Charge sheet was filed

by the police before the court. An application for discharge was filed by the accused before the court of Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. Learned Addl. Chief Metropolitan Magistrate has held that there was sufficient material on record to frame charge against the accused and therefore dismissed the application for discharge. Against this, Criminal Revision Application was preferred by the Petitioners/accused. However the Revision Application was also dismissed by the Sessions Court. Learned counsel for the Petitioner submits that the complainant was claiming allotment of two flats on the basis of the two unregistered agreement. It is submitted that the amount has been paid by way of providing finance and as and by way of security the said agreements were executed. It is further submitted that there is no averments against the Petitioner No. 2 and that merely because she is the partner of the said firm the Petitioner No. 2 has been implicated.

2. It is not possible to accept these submissions and the same can be considered at the time of the trial. There are sufficient averments in the complaint on the basis of which prima facie case is made out by the complainant for issuance of process. At the stage of issuance of process the Magistrate has to see whether

the averments made in the complaint even if they are

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taken at its face-value are sufficient for making out an offence which is alleged to have been committed by the accused. At this stage it is not proper to interfere with the order passed by the trial court and confirmed by the Revisional Court. The trial court shall exempt the Petitioner No. 2 from appearance except at the time of framing of charge and recording of the plea and recording her statement u/s. 313. The writ petition is dismissed. The Trial Court is directed to expedite the hearing of the case.

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(V.M. KANADE, J)